



July 2, 2012

Office of Health Plan Standards and Compliance Assistance
Employee Benefits Security Administration
Room N-5653
U.S. Department of Labor
200 Constitution Avenue NW
Washington, DC 20210,
Attention: Stop Loss Comments.

Submitted via: E-OHPSCA-STOPLOSS.EBSA@dol.gov

The Departments of Labor, Health and Human Services (HHS), and the Treasury invited public comment regarding 13 questions with respect to the use of stop loss insurance by companies that have self-insurance health plans. (Federal Register, Vol. 77, No. 84, Tuesday, May 1, 2012, 25788). See <http://www.gpo.gov/fdsys/pkg/FR-2012-05-01/html/2012-10441.htm>.

The National Small Business Association (NSBA) is pleased to submit these comments in response to that request.

NSBA was founded in 1937 to advocate for the interests of small businesses in the U.S. It is the oldest small business organization in the U.S. The NSBA represents more than 150,000 small businesses throughout the country in virtually all industries and of widely varying sizes.

Most of the questions posed in the notice seek data. NSBA conducts surveys of its membership and compiles data. In the past, we have not tried to determine the information sought by the Departments about stop loss insurance. We will, however, seek some of this data in future surveys.

There are few issues of greater importance to small businesses than reducing health care costs and, concomitantly, health insurance costs.

Self-insured plans play an important role in the American health care system. Most large employers self-insure. But small firms, particularly those with 25 or more employees, are increasingly taking advantage of the significant savings that can be had by self-insuring for employee health care expenses using third-party administrators and stop-loss insurance. If health care costs continue to climb, as expected, it is likely more small firms will familiarize themselves with this option and adopt it.

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The NSBA supports certain aspects of the Patient Protection and Affordable Care Act of 2010 (PPACA).¹ Specifically, we support state level health insurance exchanges as a reasonable step designed to improve the competitiveness of the health insurance market, to increase the information available to health insurance purchasers (whether individual consumers or small businesses) and to constrain health insurance costs provided that participation in the exchange is voluntary. NSBA wants the exchanges to work. Nevertheless, we are concerned that efforts by various state insurance commissioners, the National Association of Insurance Commissioners (NAIC) and others are pressuring state legislatures and the Administration to effectively bar small employers from self-insuring with stop-loss insurance by manipulating the allowable attachment points in stop-loss insurance policies.² This is being done in the name of protecting the small group market. Its primary effect is to needlessly and artificially foreclose a cost containment mechanism for small firms and to increase the cost to small firms of providing health care benefits to their employees.

Statutes or regulations arbitrarily setting allowable attachment points with the purpose of foreclosing the self-insurance option to small firms and forcing them into the conventional group health insurance market will raise the cost to small employers, reducing the likelihood that they will offer insurance to employees, increasing employee cost-sharing and placing them at a competitive disadvantage compared to large firms. It will also reduce the competitive pressure on health insurers to offer the lowest possible premiums.

We are also concerned that some state insurance departments are making it difficult for businesses to obtain health insurance claims data with respect to the policies they maintain for their employees. This, of course, makes it more difficult for them to self-insure because they cannot obtain reliable data about likely claims exposure.

If the three Departments (DOL, HHS and Treasury) continue down this path, we would strongly encourage the Departments to seriously investigate the adverse effects of such proposals on employees and small firms. They should not simply assume (incorrectly and without a rational basis) that there will be no adverse effects on employees and small firms, as does the NAIC.

Sincerely,



David R. Burton
General Counsel

¹ P.L. 111-148, amended by the Health Care and Education Reconciliation Act of 2010 (P.L. 111-152).

² http://www.naic.org/documents/committees_b_erisa_120626_stop_loss_comments_consumer_reps.pdf.
http://www.naic.org/documents/committees_b_hcra_wg_120606_milliman_stop_loss_report.pdf